

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

February 7, 2013

A meeting of the Board of Environmental Protection was held on Thursday, February 7, 2013 at the Department of Public Safety, Florian Hall, 45 Commerce Drive in Augusta, Maine. Robert Foley, Chair, called the meeting to order at 9:00 am with the following individuals:

Board: Present: Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, Richard Gould, and Susan M. Lessard.
 Absent: Board member M. Wing Goodale was absent.

Staff: None

Others: Patricia Aho, DEP Commissioner
 Cynthia S. Bertocci, BEP Executive Analyst
 Peggy Bensinger, Assistant Attorney General

I. Departmental**A. Commissioner's Comments:**

- **Budget:** State government is under a budget curtailment order which required the DEP to find \$79,000 in savings. This was done by keeping a vacant position open. The Environment and Natural Resources Committee accepted the DEP's proposal unanimously. It will now move to the Appropriations Committee. The supplemental budget is well on its way to completion from a DEP perspective. The next step will be the biennial budget, which the Commissioner will share with the Board once it has been developed.
- **Regional Greenhouse Gas Initiative (RGGI):** RGGI is releasing an updated cap and trade proposal this morning. The proposal will decrease the cap on CO2 emissions. Maine will continue to participate in the program and will use the proceeds to help working families and businesses decrease energy and electricity costs through increased efficiency.

B. Comments from the BEP Chair: Chairman Foley thanked Department staff for the work they did following the January 17th Board meeting, including working the holiday weekend, to revise the Chapter 882 rule and complete the basis statement and response to comments so that action could be taken on the rule at the January 24th meeting.**C. Executive Analyst Comments:** None**D. Board Calendar:** Reviewed. No meeting on February 21, 2013.**E. Departmental Orders/ applications accepted for processing:** None**F. Executive Session:** None**II. Consent Agenda Items:** None1. **BEP Meeting Minutes:** January 17, 2013 (approval)

The Board voted (4-0-1-2) on a motion to approve the minutes for January 17, 2013 with the correction of the following two typographical errors:

BEP Meeting Minutes: December 20, 2012: The Board voted (5-0-1-1) on a motion to approve consent agenda item 4 2.

BEP Meeting Minutes: January 3, 2013: The Board voted (4-0-2-1) on a motion to approve consent agenda item 4 3.

The vote was taken pursuant to 38 M.R.S. § 341-D.

Board members Alvin Ahlers, Elizabeth Ehrenfeld, Robert Foley, and Richard Gould voted to support the motion. Board member Thomas Eastler abstained. Board members M. Wing Goodale and Susan Lessard were absent.

2. **BEP Meeting Minutes:** January 24, 2013 (approval)

The Executive Analyst distributed revised minutes that more fully explained the procedure followed by the Board and Commissioner when acting on Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products / Citizen Petition for Rulemaking to Require Safer Alternatives to Bisphenol A in Food and Beverage Packaging for Young Children. The Board voted (5-0-0-2) on a motion to approve the revised January 24, 2013 meeting minutes as presented. The vote was taken pursuant to 38 M.R.S. § 341-D.

Board members Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, and Richard Gould voted to support the motion. Board members M. Wing Goodale and Susan Lessard were absent.

III. Regular Agenda Items:

1. Chapter 3: Rules Governing the Conduct of Licensing Hearings (Proposed for Adoption)
Staff: Cynthia Bertocci, Board Executive Analyst

Chapter 3 is a routine technical rule requiring action by both the Board and the Commissioner. Following staff presentation and discussion, Board member Ehrenfeld made a motion, seconded by Board member Ahlers, to adopt Chapter 3 as presented and to repeal existing Chapter 20 (*Regulations for Hearings on Applications*) and existing Chapter 30 (*Special Rules for Hearings on Applications of Significant Public Interest*).

A motion was then made and seconded to table the Board's action on the motion in order to allow the Commissioner to state the manner in which she proposes to act on proposed Chapter 3.

For the purpose of allowing public comment prior to a decision, Commissioner Aho stated that she intends to adopt Chapter 3 and the accompanying basis statement and response to comments. Commissioner Aho then tabled her decision to allow the Board and the Commissioner to accept public comment pursuant to 38 M.R.S. § 341-H(3)(C). One person commented expressing appreciation for the updating of the rules for licensing hearings, thanking the Department for its consideration of comments received, urging the Presiding Officer to err on the side of allowing Department staff and hired consultants to testify at a hearing, and commenting on the value of demonstratives while recognizing the need to pre-file such documents. She did not request a change in the rule.

The Board then took up its motion and voted (5-0-0-2) to adopt new Chapter 3 and to repeal existing Chapters 20 and 30. The vote was taken pursuant to 38 M.R.S. § 341-H, 38 M.R.S. § 345-A, and 5 M.R.S. § 8051.

Board members Alvin Ahlers, Thomas Eastler, Elizabeth Ehrenfeld, Robert Foley, and Richard Gould voted to support the motion. Board members M. Wing Goodale and Susan Lessard were absent.

Commissioner Aho then stated that she will adopt new Chapter 3 and repeal existing Chapters 20 and 30 pursuant to 38 M.R.S. § 341-H, 38 M.R.S. § 345-A, and 5 M.R.S.A. § 8051.

- 2) Board Member Orientation Refresher / Discussion.
Staff: Peggy Bensinger, Assistant Attorney General

Ms. Bensinger reviewed a number of matters with Board members including: the Board's statutory responsibilities, ex parte communications rule, guidance for accepting public comment, and handling potential conflicts of interest. No vote was taken.

(The meeting adjourned at approximately 10:30 a.m.)

*Next Meeting –Thursday, March 7, 2013, Florian Hall,
Department of Public Safety, 45 Commerce Drive, Augusta*

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